

101 FERC ¶ 61,346  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

Avista Corporation,  
Bonneville Power Administration,  
Idaho Power Company,  
Nevada Power Company  
NorthWestern Energy, L.L.C.  
PacifiCorp,  
Portland General Electric Company,  
Puget Sound Energy, Inc.,  
Sierra Pacific Power Company,  
British Columbia Hydro and Power Authority

Docket No. RT01-35-009

ORDER GRANTING IN PART AND DENYING IN PART REHEARING

(December 20, 2002)

1. In this order, the Commission grants in part and denies in part requests for rehearing of the Commission's order issued on September 18, 2002 (September 18 Order).<sup>1</sup> This order provides further guidance concerning the proposal to form RTO West.

**Background**

2. The September 18 Order was a declaratory order that provided guidance in response to the Stage 2 filing by Avista Corporation, Bonneville Power Administration, Idaho Power Company, NorthWestern Energy, L.L.C. (formerly Montana Power Company), Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., Sierra Pacific Power Company, and British Columbia Hydro and Power Authority (collectively, Applicants) concerning their proposal to form a regional transmission organization (RTO), RTO West.

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<sup>1</sup>Avista Corp., et al., 100 FERC ¶ 61,274 (2002) (September 18 Order), order granting clarification, 101 FERC ¶ 61,034 (2002).

3. Timely requests for rehearing of the September 18 Order were filed by: Applicants; Public Power Council; Duke Energy North America, LLC and Duke Energy Trading and Marketing, LLC (Duke Companies); Public Generating Pool and Washington Public Utility Districts Association (collectively, Public Generating Pool); the Washington Utilities and Transportation Commission (Washington Commission); Utah Associated Municipal Power Systems (UAMPS); Northwest Requirements Utilities Power (collectively, Northwest Requirements and PNGC); and Montana Consumer Counsel.

4. On November 1, 2002, Applicants filed a motion pursuant to Rule 713 of the Commission's Rules of Practice and Procedure,<sup>2</sup> requesting an opportunity to file briefs if the Commission elects to rehear issues.

## **Discussion**

### **A. Procedural Matters**

5. In support of their motion to file briefs, Applicants state that some of the rehearing requests, if granted by the Commission, would change Applicants' Stage 2 proposal and therefore have significant impact on Applicants. They state that "[s]hould the Commission be inclined to consider rehearing on any of such issues, the Applicants believe it is appropriate that they have an opportunity to respond to the arguments made in these petitions before the Commission makes decisions on rehearing."<sup>3</sup>

6. We will deny this motion. Applicants request the opportunity to file an answer to the requests for rehearing. But Rule 213 of our Rules of Practice and Procedure<sup>4</sup> prohibits answers to requests for rehearing unless otherwise ordered by the decisional authority. We are not persuaded that permitting an answer to the requests for rehearing will aid us in providing further guidance concerning the RTO West proposal.

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<sup>2</sup>18 C.F.R. § 385.713(d)(2) (2002).

<sup>3</sup>Applicants' Request for Rehearing at 2.

<sup>4</sup>18 C.F.R. § 385.213(a)(2) (2002).

**B. Dispute Resolution Process****1. September 18 Order**

7. Our September 18 Order found that the inclusion of a dispute resolution process in the Transmission Operating Agreement (TOA) to govern disputes between RTO West and the Participating Transmission Owners (PTOs) is reasonable. But, the order also stated that it was premature, before the RTO West Tariff is filed, to address whether entities that are not parties to the TOA will have sufficient alternative dispute resolution (ADR) rights.

**2. Comments**

8. UAMPS asserts on rehearing that the Commission did not address UAMPS' argument that RTO West's exercise of its core RTO functions should not be subject to the dispute resolution process. Specifically, UAMPS requests that the Commission clarify that RTO West (and the Commission through its filing, notice and approval processes), not an outside arbitrator must have final authority over all core RTO functions, including congestion management, transmission planning and ancillary services. UAMPS states that if the PTOs can seek arbitration for decisions made by the RTO, they will be able to influence the RTO's decisions by threatening to invoke arbitration if the RTO does not operate according to their preferences.

**3. Commission Determination**

9. We did not rule for or against UAMPS in the September 18 Order. Rather, we stated, and we still find, that it would be premature to address the sufficiency of participants' ADR rights until we can compare the ADR provisions of the TOA and the RTO West Tariff.

**C. Revised Transmission Operating Agreement****1. September 18 Order**

10. Applicants submitted a revised Transmission Operating Agreement (TOA) as the controlling document for RTO West. Intervenor argued that the TOA, which is to be executed by transmission owners joining RTO West, contains numerous provisions which are related to RTO service and that should be included in the RTO West Tariff (which is still under development). Intervenor specifically objected to Section 25.18, which states:

In the event of conflict between the terms of this Agreement and the terms of: (1) the RTO West Tariff; or (2) the Executing Transmission Owner Rate Schedules, the terms of this Agreement shall govern.

The September 18 Order rejected Section 25.18 of the TOA, stating that although owners of transmission facilities have legitimate reasons to protect their capital investment and to define their relationship with RTO West with regard to its use and operation of those facilities, any agreement reflecting such arrangement must not interfere with an RTO's ability to propose, implement, and change terms and conditions of the services it will provide.

## **2. Comments**

11. Applicants request rehearing, or in the alternative, clarification of the Commission's determination regarding Section 25.18 of the TOA. Applicants seek clarification that by rejecting Section 25.18 of the TOA, it is not the intent of the Commission to allow RTO West, at its discretion, to propose Tariff terms and conditions and changes thereto without regard to preexisting contracts, including the TOA. Applicants state that many of the TOA provisions address the arrangements to "protect [the Participating Transmission Owners'] capital investment and to define their relationship with RTO West as it relates to its use and operation of facilities." Applicants argue that provisions in the TOA reflect fundamental compromises necessary to permit Applicants to participate in a voluntary RTO.<sup>5</sup>

12. Applicants recognize that some provisions of the TOA may limit RTO West's right to change certain terms and conditions and prices of service,<sup>6</sup> but argue that this is necessary to move the proposal forward. Applicants state that if Section 25.18 of the TOA goes too far in its inclusion of all provisions of the TOA, Applicants will submit a proposal for a more limited list of TOA provisions that the Tariff must respect.<sup>7</sup>

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<sup>5</sup>For example, the TOA contains performance standards provisions imposed upon RTO West to accommodate Bonneville's participation and others provisions are included to win support from state or provincial authorities.

<sup>6</sup>These components include the Company Rate Period and the voluntary conversion process.

<sup>7</sup>Applicants state that if this is the intent, they will propose in a future filing a  
(continued...)

13. Public Power Council requests rehearing unless the Commission clarifies that its rejection of Section 25.18 is initial guidance only, and it requests that the Commission defer its final determination on the relationship between the TOA and the Tariff, pending the Stage 3 process.

14. Washington Commission and Northwest Requirements Utilities argue that Section 25.18 of the TOA is necessary to ensure that Bonneville can participate in the RTO and still meet its statutory obligations. The Washington Commission further argues that: (1) insistence that the RTO West Tariff must control over the TOA is inconsistent with the Atlantic City remand;<sup>8</sup> (2) the Stage 2 filing was the outcome of a collaborative process to encourage voluntary participation; (3) the September 18 Order repeatedly pointed to the TOA as the mechanism by which the interests and issues raised by intervenors are addressed; and (4) if the TOA does not govern conflicts with the yet-to-be-filed RTO West Tariff, Applicants will be unable to obtain necessary state commission approvals. Northwest Requirements Utilities state that they recognize that it would be unusual to allow a contract to govern a tariff, but they maintain that the proposed approach reflects permissible deference to state regulatory interests.

### **3. Commission Determination**

15. The blanket nature of section 25.18 of the TOA, which provides that the terms of the TOA will always govern in the event of a conflict between the TOA and the terms of the RTO West Tariff or rate schedules, is not acceptable because it does not adequately reflect the need to provide for a non-discriminatory tariff to govern transmission access in the region and an independent entity to administer the tariff. However, we recognize that many TOA provisions may reflect longstanding negotiated contractual arrangements or treaty or statutory obligations of the parties. We also recognize that the willingness or ability of some entities to participate in the RTO may hinge on particular agreed upon provisions in the TOA. Accordingly, we must balance the need to ensure independence of the RTO and operation of an efficient non-discriminatory transmission grid with the legal obligations and interests of the parties joining the RTO. To appropriately undertake this balancing, we accept Applicants' commitment to provide a list of the specific TOA provisions that are essential to meeting members' legal obligations or affect their ability

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<sup>7</sup>(...continued)

modified list of TOA provisions that may not be changed without agreement of RTO West and the Participating Transmission Owners. At that time, the Commission will have the opportunity to judge these controlling TOA provisions.

<sup>8</sup>See Atlantic City Elec. Co. v. FERC, 295 F.3d 1 (D.C. Cir. 2002) (Atlantic City).

to participate in the RTO (and also a list of the tariff or rate schedule provisions with which the TOA provisions may conflict) and an explanation of why these provisions are essential. Once we have this list of TOA provisions and the RTO West Tariff, we will allow all interested parties an opportunity to comment on the provisions and we will make a decision at that time.

16. Washington Commission's Atlantic City argument is misplaced. Atlantic City is distinguishable from the facts of this case. That decision concerned, in relevant part, the respective FPA section 205 filing rights of the transmission owners and the RTO. That is not the issue presented by RTO West Applicants' proposal, which concerns conflicts between a Commission-filed agreement (the TOA) and a Commission-filed tariff (the RTO West Tariff). Further, as discussed above, we clarify that we will defer action on Section 25.18 until Applicants file a list of TOA provisions that they propose will govern over the RTO West Tariff.

#### **D. Characteristic No. 2 - Scope and Regional Configuration**

##### **1. Bonneville Participation**

###### **a. Pre-existing Transmission Rights**

17. Regarding the September 18 Order's determination that the Commission will not require conversion of contracts, Public Power Council asserts that the RTO West proposal protects only those rights captured in transmission contracts. Rights granted to Bonneville's customers, and incorporated in Bonneville's tariff and business practices, would not be protected. It contends that Bonneville's preference customers would be at the mercy of RTO West for protections previously assured under Bonneville's tariff and business practices. It requests clarification that the Commission does not intend to compromise pre-existing transmission rights that are not incorporated in contracts between Bonneville and its preference customers.

18. Given that Bonneville's participation in RTO West is still being negotiated, it was not our intent to address, and certainly not to "compromise," the pre-existing transmission rights of Bonneville's preference customers. It was not our intent to alter any pre-existing statutory protections afforded to Bonneville's preference customers.

###### **b. Contingency of Bonneville's Participation**

19. Public Generating Pool requests clarification that the determinations in the September 18 Order are contingent upon Bonneville's participation in RTO West. It

argues that the Commission's determinations fail to consider its arguments concerning the effect of Bonneville's inability to participate in RTO West.

20. The September 18 Order recognized that Applicants stated that they would move forward with the RTO West proposal so long as they had at least Bonneville and two contiguous utilities. They emphasized that Bonneville's participation is critical to the RTO West proposal, and the order stated that our guidance assumes that Bonneville will be a participant. Since Applicants have given no indication that they would proceed with the proposal without the participation of Bonneville, it is speculative and unnecessary at this time to attempt to address that contingency.

## **2. Facilities to Be Included in RTO West**

### **a. September 18 Order**

21. Applicants' Stage 2 Filing described the "classes" of facilities over which RTO West will have operational control. However RTO West will not have control over all transmission facilities; rather, it will "provide access to service on facilities that are not included as part of the RTO West Transmission System but that are needed to transmit wholesale power (local distribution facilities).<sup>9</sup> In addressing issues raised by intervenors, the September 18 Order directed Applicants to:

file a complete list of their facilities (i.e., an inventory of each Applicant's lines, substations, etc., owned or operated by the Applicant for purposes of moving electricity regardless of its current accounting designation as transmission or distribution) and to identify and fully explain the disposition of each facility (e.g., whether a facility is under RTO West control for operational purposes, pricing, interconnection, planning, or remains under the PTO's operational control.<sup>[10]</sup>  
[footnote omitted]

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<sup>9</sup>Stage 2 Filing, Transmittal Letter at 34.

<sup>10</sup>100 FERC at P 70.

**b. Comments**

22. Applicants seek clarification that the issue of which facilities must be included in RTO West for various purposes, (including operational authority, pricing, interconnection and planning) will be decided by the Commission after receipt of additional information and explanation sought in the September 18 Order. With respect to the information requested, Applicants seek clarification that it need not include low-voltage facilities that are not used to provide wholesale transmission service.<sup>11</sup> In the alternative, Applicants seek rehearing.<sup>12</sup>

23. UAMPS states that the September 18 Order directed the Applicants to file a complete list of all of their facilities, regardless of label, and to "identify and fully explain the disposition of each facility." The Commission directed the Applicants to explain "why each facility proposed to be classified as a Class B facility is more appropriately controlled by PTOs rather than by RTO West." UAMPS asserts that the Commission's intent was for each PTO to justify all of its proposed classifications. It requests that the Commission clarify that the Applicants need to justify their proposal limiting RTO West's authority over Class C and D facilities, as well as over Class B facilities, if those facilities provide or support wholesale transmission service.

24. According to Northwest Requirements Utilities, the September 18 Order appeared to require that all facilities required for wholesale service be included in the RTO, but the Standard Market Design NOPR<sup>13</sup> proposed to use a seven-factor test as a starting point to

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<sup>11</sup>Applicants do not believe that the Commission intended that each Applicant list all of its facilities used for distribution of power to retail customers, including low-level distribution lines, transformers from primary feeders to service drops and service drops to each individual customer's homes or businesses. Applicants' Request for Rehearing at 11, note 27.

<sup>12</sup>If rehearing is granted with respect to which facilities must be included in RTO West for different purposes, Applicants request that the Commission permit Applicants to file additional explanation and legal argument regarding the effect of requiring that all distribution facilities used for wholesale service be under RTO West's operation control on the efficiency and cost of RTO West, as well as on the ability of the public utilities that participate in RTO West to provide retail service.

<sup>13</sup>Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design, 67 Fed. Reg. 55,451 (Aug. 29, 2002), FERC (continued...)



determine whether facilities are transmission or local distribution. They assert that the NOPR's request for comments on whether there should be a "bright line voltage test" in addition to or in lieu of the seven-factor test is apparently in conflict with the September 18 Order's determination. They request clarification that all facilities used for wholesale service, regardless of classification or voltage levels, will be included under RTO West for purposes of access, planning and expansion, pricing and dispute resolution purposes.

25. According to Public Power Council, the September 18 Order's determination could result in exclusion from RTO West of facilities called "distribution" but used for wholesale transmission to public power customers in the RTO West control area, resulting in rate pancaking. It requests that the Commission clarify that all of Applicants' facilities necessary for wholesale transmission must be included.

**c. Commission Determination**

26. In their request for rehearing, Applicants state that in identifying distribution facilities used for wholesale service, they intend to report the total number of distribution feeders and will identify the specific distribution feeders and the points of delivery on the distribution facilities used for wholesale service at 34.5 kV and below. They will also identify the wholesale customers taking service at each wholesale point of delivery. However, they do not plan to individually identify other distribution facilities at 34.5 kV and below that are used only for retail service. Their list will also identify wholesale points of delivery and customers on any facilities above 34.5 kV that are not a part of RTO West Controlled Transmission Facilities. We clarify (1) that the information as outlined in Applicants' rehearing request will provide an acceptable level of detail and (2) that our directive in the September 18 Order does not include information on facilities that are used exclusively for local distribution of power to retail customers, including low-level distribution lines, transformers from primary feeders to service drops and service drops to each individual customer's home or business. We reserve judgment on the issue of which facilities must be included in RTO West, pending receipt of this additional information.

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<sup>13</sup>(...continued)  
Stats. & Regs. ¶ 32,563 (2002).

**E. Tariff Administration and Design****1. Company Rate Period****a. September 18 Order**

27. Applicants proposed a license plate rate design (the Company Rate) and proposed to retain the initial rate design for a transition period of eight years. The September 18 Order recognized that the proposed transition period is intended to foster participation in RTO West by market participants, including public power entities, and approved Applicants' license plate rate design as consistent with the requirements of Order No. 2000. While the September 18 Order noted that the Standard Market Design NOPR contemplates a shorter transition period, we accepted Applicants' proposal regarding the length of the Company Rate Period, but directed the RTO West Market Monitor to evaluate and report whether market efficiency improvement could be accomplished by a shorter transition period.

**b. Comments**

28. Applicants, Northwest Requirements Utilities, and Public Power Council state that the Commission appears to have accepted the length of the Company Rate Period. However, they express concern that the directive to evaluate and report on whether market efficiency improvement could be accomplished by a shorter transition period implies that the independent board of RTO West, or the Commission could unilaterally abbreviate the Company Rate Period.<sup>14</sup> They seek clarification on this issue.

**c. Commission Determination**

29. As stated in the September 18 Order, we acknowledge the parties' concern for certainty with respect to potential cost shifts and the need for operating experience under RTO West. We also recognized that while the Standard Market Design NOPR contemplates a shorter transition period for conversion to service from an independent transmission provider under a single rate design, we nevertheless accepted Applicants' proposal regarding the length of the Company Rate Period. Upon further consideration, we believe that the September 18 Order's directive that the Market Monitor specifically

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<sup>14</sup>Applicants state that in their next filing, they will propose that the Company Rate Period should be in the category of TOA provisions that cannot be changed without the agreement of the Participating Transmission Owners.

evaluate and make a recommendation concerning the length of the transition period would introduce unnecessary uncertainty regarding the length of the transition period. Consequently, we will grant rehearing and not require the Market Monitor to evaluate this issue.

## **2. Treatment of Transmission Rights in Retail Choice Regimes**

30. The September 18 Order stated that existing transmission rights should follow load if it shifts suppliers in a retail choice regime. Applicants request that the Commission clarify that its statement is intended to serve as guidance for the next stage of RTO West development and that the Commission will defer ruling on this issue until Applicants have submitted a complete Tariff and market design proposal.

### **Commission Determination**

31. Our statement was made in response to an issue raised by Wyoming Energy Consumers and was intended to serve as guidance for Applicants' development of their market design.

## **3. Transmission Pricing**

### **a. September 18 Order**

32. The September 18 Order approved Applicants' use of a license plate rate design methodology as consistent with Order No. 2000 and approved the use of an export fee based on the average cost of the RTO West transmission system as a reasonable transition mechanism.

### **b. Comments**

33. Public Power Council argues that, in encouraging entities throughout the West to negotiate to eliminate the export fee, the Commission would take away the protections provided in its determination on the export fee.<sup>15</sup> It requests that the Commission determine that the export fee must continue to allow the region to recoup all costs of exports from RTO to another, if RTO West becomes operational.

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<sup>15</sup>See September 18 Order at P 133.

34. Duke Companies state that the September 18 Order did not limit its ruling to approving the Export Fee in concept; rather, they believe that the Commission approved the Export Fee unconditionally and state that by doing so, the Commission failed to address its discrimination argument. Duke Companies claimed that to the extent that Transmission Owners and other grandfathered customers (1) avoid the additional transaction costs that new transmission users must pay in the form of the Export Access Fee and (2) obtain benefits that new transmission users do not receive (in the form of congestion hedges) the proposal has a discriminatory effect. Although the September 18 Order concluded that the rate treatment for inter-regional and intra-regional transactions should be consistent to avoid creating artificial incentives or disincentives for trade across regions, the Export Fee was approved. In addition, while the September 18 Order indicates that the Export Fee may be acceptable as a "transitional" pricing mechanism, the order fails to specify the length of the transition period. Duke Companies seek clarification that the Commission intends to address the appropriate transition period when it reviews other aspects of the comprehensive rate proposal.<sup>16</sup> In addition, Duke Companies state that under the Standard Market Design NOPR, any entity paying a transmission access charge (such as the Export Fee would receive Congestion Revenue Rights or revenues from the auction of Congestion Revenue Rights to hedge against congestion charges. Finally, Duke Companies assert that the Commission's justification for approving the Export Fee is inconsistent with the stated purpose of the Export Fee, i.e., to fund the Replacement Revenue Pool in order to mitigate the potential loss of revenues from nonfirm and short-term firm transmission services that are currently subject to pancaked rates.<sup>17</sup>

35. Duke Companies state that the Commission limited its review of the RTO West rate proposal to, "the reasonableness of the design of the license plate rate design and Export Fee." Duke Companies continue to disagree with the method used by Applicants to calculate the Revenue Recovery Target. In particular, Duke Companies state that the baseline used by Applicants to create the Revenue Recovery Target overstates the reasonably expected revenue loss because it bases estimates of lost revenues on historical

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<sup>16</sup>If the Commission does not grant clarification, Duke Companies seek rehearing of the approval of an eight-year minimum transition period during which the Export Fee would be applicable.

<sup>17</sup>See September 18 Order, 100 FERC at P 136 ("Absent the imposition of an export fee or some other mechanism to recover the cost of transmission, customers outside the RTO West footprint would not contribute in the recovery of the cost of the transmission system.").

transaction volumes that are not representative of future periods.<sup>18</sup> Duke Companies argue that the Revenue Recovery Target must reflect reasonably expected transaction volumes that would, absent establishment of the RTO, have been reflected under a pancaked rate regime.

36. Duke Companies seek assurance that the Commission deferred action on the Revenue Recovery Target and other components of the rate proposal. They seek clarification that the Commission's reference to the "design of the license plate rate design" means that the Commission has approved only the principle of using a license plate rate design and that the Commission's approval did not extend to the Revenue Recover Recovery Target and other rate components.

**c. Commission Determination**

37. As noted above, the September 18 Order approved Applicants' use of a license plate rate design methodology as consistent with Order No. 2000. The September 18 Order also concluded that the use of an export fee based on the average cost of the RTO West transmission system is reasonable as a transitional pricing mechanism. However, under current rate designs, a transmission customer that transmits power from one region to another would pay two transmission charges to recover the embedded costs of the transmission provider from which the power was exported, as well as the embedded costs of the transmission provider where the power is delivered to load. Thus, transmission pricing across RTO borders can: (1) create artificial incentives or disincentives for trade; (2) impact power purchasing decisions; and (3) affect RTO formation. It is the Commission's intent that full embedded costs be recovered. A customer's choice to purchase power from a generator located within the same RTO or a neighboring RTO is directly affected by the fact that one generator faces an additional access charge to reach the RTO in which the load is located, which may make the sale uneconomic. We expect Applicants to continue to address the issue of export charges through the SSG-WI and its Price Reciprocity Working Group to find an appropriate cost recovery solution for the Western RTOs. If RTO West becomes operational before a resolution is reached regarding inter-RTO price reciprocity, RTO West may impose an export fee. We find Duke Companies' claim that an export fee mechanism is discriminatory to be misplaced. All new transmission service will be provided by RTO West, and customers will be assessed a charge that reflects their use of RTO West facilities. Grandfathered existing

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<sup>18</sup>Duke Companies argue that revenue losses include atypical and nonrecurring factors such as the California electricity crises and the extremely abnormal weather patterns during that period.

contracts will be administered in accordance with the terms of such agreements; any difference in rates between existing contracts and RTO West service derives from the contract terms. Affording existing customers their contractual rights, therefore, is not discriminatory.

38. The September 18 Order did not address the merits of the individual rate components, such as the Revenue Recovery Target and the individual components of the export fee, which will be considered in a future filing.

## **F. Authority Over Planning, Expansion and Interconnection**

39. The September 18 Order directed Applicants to revise the TOA and the planning and expansion proposal to "clarify that RTO West has 'ultimate responsibility for both transmission planning and expansion within its region,' consistent with Order No. 2000."<sup>19</sup> In addition, the Commission stated that "standards for interconnection . . . [are] to be administered solely by RTO West for all interconnection requests."<sup>20</sup>

## **2. Comments**

40. Applicants state that the in pointing out an inconsistency in the Stage 2 planning and expansion authority over Certain Distribution Facilities, the Commission stated, "Applicants [must] clarify that RTO West has planning authority over all facilities necessary to provide wholesale transmission service. Applicants argue that States have maintained planning authority over distribution facilities used for delivery to retail loads that are the exact facilities used for wholesale service. The Commission recognized this state authority in Order No. 888 and has not previously attempted to assert jurisdiction over the delivery component of bundled retail service, regardless of voltage. Applicants assert that the process for determining whether distribution facilities must be under RTO West authority for planning or other purposes should be consistent with the SeTrans order for transmission facilities."<sup>21</sup> Using this approach, Applicants commit to submitting their rationale with their next filing.

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<sup>19</sup>100 FERC at P 227.

<sup>20</sup>Id. at P 142.

<sup>21</sup>See Cleco Power, LLC, et al., 101 FERC ¶ 61,008 at P 60 (2002), reh'g pending (SeTrans) ("Sponsors will be required to provide a rationale for excluding transmission assets providing wholesale transmission service from the functional control and responsibility of the ISA.").

41. Applicants request that the Commission clarify that a final determination concerning the extent to which the planning authority of RTO West encompasses facilities not under RTO West's operational authority (including state regulated distribution) is deferred until after Applicants complete their filing on facilities.<sup>22</sup>

42. Applicants state that the September 18 Order's broad directives can be read as overriding other TOA provisions which preserve Bonneville's statutory obligations. However, the Commission stated in the September 18 Order that it was deferring action on the other TOA provisions, other than Section 25.18, pending submission of the RTO West Tariff. Applicants request that the Commission clarify that neither (1) its statement concerning RTO West's ultimate authority over planning and expansion nor (2) its statement that interconnection requests are to be administered solely by RTO West requires the elimination of TOA provisions negotiated in order to preserve Bonneville's statutory obligations with respect to the federal transmission system or to allow other Participating Transmission Owners' efforts to preserve state regulation of interconnections to state-regulated distribution facilities. In the alternative, Applicants request rehearing.

43. UAMPS states that two provisions in the TOA, if approved would undermine RTO West's independent authority over planning and expansion and would operate as a disincentive to third-party expansion proposals. UAMPS requests that the Commission modify its Order in the following respects: The provisions that limit RTO West's backstop authority should be modified to ensure that RTO West can effectively address all transmission needs, consistent with Order No. 2000 and SMD NOPR and the proposed transmission owners' "right to participate" in third-party expansion projects should both be rejected.

44. According to UAMPS, the planning proposal limits RTO West's ability to direct system upgrades or expansions to four specific circumstances only: (1) to ensure adequate Available System Capacity to satisfy outstanding Transmission Service obligations; (2) to remedy insufficiency of the Executing Transmission Owners Congestion Management Assets; (3) to ensure compliance with Transmission Adequacy Standards;<sup>23</sup> and (4) when the RTO West Board of Trustees in consultation with the

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<sup>22</sup>Applicants' Request for Rehearing at 14.

<sup>23</sup>Transmission Adequacy is the physical ability of the RTO West-controlled transmission facilities, irrespective of the cost of energy, to serve load. RTO West has the  
(continued...)

Market Monitoring Unit demonstrates market failure to mitigate chronic, significant, commercial congestion. UAMPS argue that the Commission should require the filing utilities to eliminate these restrictions on RTO West's backstop authority. RTO West should have the ability to ensure that all reliability, economic and public interest needs on its system are met.<sup>24</sup>

45. UAMPS further state that the planning and expansion proposal would give a PTO the ability to demand some level of participation in and some share of the benefits that accrue from, a third party's proposed expansion project.<sup>25</sup> UAMPS urge the Commission to reject the proposed "right to participate" in third-party expansion projects.

### **3. Commission Determination**

46. The September 18 Order concluded that, with modifications, the RTO West planning and expansion provisions meet the requirements of Order No. 2000.<sup>26</sup> We take the opportunity to clarify issues raised by Applicants and UAMPS on rehearing. Applicants assert that the process for determining whether distribution facilities must be under RTO West authority for planning should be consistent with the SeTrans Order and commit to submitting their rationale with their next filing. We accept this commitment and direct Applicants to include their rationale as part of their information response regarding facilities. We defer ruling specifically on those facilities over which RTO West has planning authority pending receipt of this additional information. Applicants seek further assurance that statements in the September 18 Order directing Applicants to revise the TOA and the planning and expansion protocol do not apply to those provisions which preserve Bonneville's statutory obligations with respect to the federal transmission

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<sup>23</sup>(...continued)  
authority to require the PTOs comply with established standards.

<sup>24</sup>RTO West should have the ability to order system expansions to accommodate public interest concerns, such as promoting fuel diversity.

<sup>25</sup>See Applicants' Stage 2 Filing, Attachment I at 15. UAMPS notes that the Commission has rejected the "right of first refusal" provisions proposed by both GridSouth and TransConnect to match the lowest bid to construct transmission projects. See *Carolina Power & Light Co., et al.*, 94 FERC ¶ 61,273 at 62,010, reh'g denied, 95 FERC ¶ 61,282 (2001), appeal pending, No. 01-1934, et al. (4th Cir.); *Avista Corp., et al.* and *TransConnect, LLC*, 100 FERC ¶ 61,297 at P 47 (2002).

<sup>26</sup>100 FERC at 62,085-86.



system or allow other PTO's efforts to preserve state regulation of interconnections to state regulated distribution facilities. As noted above, we will consider, in a future filing those provisions in the TOA which Applicants believe are necessary to address participation by various entities. This list, together with the proposed RTO West Tariff, will allow the Commission to make an informed decision on this matter.

47. UAMPS disagrees with our approval of the backstop provisions in the TOA and the Planning and Expansion Protocol<sup>27</sup> and asserts that RTO West should have the ability to ensure that all reliability, economic and public interest needs on the transmission system are met. Under the RTO West Planning and Expansion Proposal, if RTO West determines that upgrades to certain facilities are necessary to support or improve Total Transmission Capability or for regional reliability, RTO West may arrange for such upgrades and allocate the costs of such upgrades to those parties that benefit. RTO West may allocate costs to a PTO if the upgrade was required to satisfy the PTO's obligations and the PTO may include such costs in its applicable tariff. We believe that RTO West has the appropriate "backstop" authority, including the authority to arrange for upgrades to address economic as well as reliability issues.<sup>28</sup> We also believe it is important for these "backstop authority" parameters to be established from the outset so that RTO West has clear authority in this regard. Therefore, we deny rehearing on this issue. Further, as the Commission stated in the September 18 Order, "we encourage RTO West to continue Steering Group discussions and to participate in other working group forums to develop an appropriate planning process for the entire Western Interconnection."<sup>29</sup>

48. UAMPS also seeks rejection of the PTO's right to participate in an upgrade or expansion proposed to RTO West by a third party. According to the Application, a PTO may participate in an upgrade or expansion and has the right to receive a portion of the transmission rights resulting from such upgrade or expansion in exchange for appropriate cost-sharing responsibility. We find that Applicants do not explain or justify why this

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<sup>27</sup>RTO West will have backstop authority to require expansion in four situations where a PTO has not fulfilled Transmission Adequacy Requirements, including the failure of a PTO to provide sufficient congestion management assets, to expand the system to ensure sufficiency; to implement whatever cost-effective transmission solutions it determines are appropriate to mitigate congestion.

<sup>28</sup>See also PJM Interconnection, L.L.C., 101 FERC ¶ (2002) (discussion of Planning and Expansion), which is being issued concurrently.

<sup>29</sup>100 FERC at P 234.

provision is necessary. We therefore, grant rehearing on this matter and direct Applicants to explain the applicability of this provision in a future filing.

## **G. Congestion Management**

### **1. Comments**

49. Public Power Council requests clarification that Applicants do not have to demonstrate that the RTO West congestion management proposal will not produce seams with other RTOs in the West. It argues that the September 18 Order recognizes the unique challenges in establishing locational prices for RTO West. It further contends that the congestion management model for service that is substantially hydroelectric generation will have to be different from the congestion management models in California or the Southwest, which are served primarily by thermal generation. It argues that it is arbitrary to recognize the uniqueness of the region and then require that Applicants to work toward a seamless congestion management scheme.

### **2. Commission Determination**

50. While we recognize the uniqueness of the region, our goal is to promote seamless trading across RTOs in the Western Interconnection. For this reason, Applicants must demonstrate that their proposal will not create a barrier to trading across the regions and will in fact promote seamless trading. We disagree that our decision is arbitrary.

## **H. Cost-Benefit Study**

### **1. September 18 Order**

51. Applicants commissioned a cost-benefit study of the RTO West proposal (Tabors Study), although they did not file it with their application. However, Public Generating Pool attached the Tabors Study to its protest and, along with other parties, argued that the study supported the conclusion that the RTO West proposal would harm consumers. The September 18 Order stated that the Commission will address the cost-benefit issue when it renders a final decision.

### **2. Comments**

52. Several parties<sup>30</sup> argue that the September 18 Order should have addressed the Tabors Study's cost-benefit evidence.

**3. Commission Determination**

53. Order No. 2000<sup>31</sup> stated that we expect the benefits of RTO formation overall to outweigh the costs. It did not require cost-benefit analyses of particular RTO filings. Nevertheless, we are reviewing existing cost-benefit studies of RTOs and plan to review others that are currently being conducted when they become available. We will consider such studies, like other analyses and arguments submitted during the course of individual proceedings, before issuing a final order on an RTO proposal. However, because the September 18 Order was a preliminary order on Applicants' proposal, it would be premature to address such an analysis now.

**I. Miscellaneous**

**1. Standard Market Design**

**a. September 18 Order**

54. The September 18 Order stated that the Commission viewed the RTO West filing as, "both informing and being informed by the proposed [Standard Market Design] proposed rule."<sup>32</sup>

**b. Comments**

55. Applicants state that this statement and others have led them to believe that although the RTO West proposal would inform the Standard Market Design final rule to permit regional flexibility, their proposal would remain subject to its outcome. However, the Commission stated in the SeTrans Order:

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<sup>30</sup>Public Generating Pool, Public Power Council, Montana Consumer Counsel, Northwest Requirements Utilities.

<sup>31</sup>Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (Mar. 8, 2000), FERC Stats. & Regs. ¶ 30,092 (2000), aff'd sub nom. Public Utility District. No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

<sup>32</sup>100 FERC at P 3, P 273.

[W]e take this opportunity to clarify that it not this Commission's intent to overturn, in the final SMD rule, decisions that are made in this docket. In other words, unless the Commission has specifically indicated in this order that an element of the RTO proposal is inconsistent with the SMD proposal or needs further work in light of the SMD proposal, we do not intend, in the final SMD rule, to revisit prior approvals or acceptances of RTO provisions because of possible inconsistencies with the details of the final rule. This Commission intends to take all appropriate steps at the final rule stage of the SMD rulemaking to ensure that, to the extent we have already approved or conditionally approved RTO elements, these approvals would remain intact.<sup>33]</sup>

56. Applicants seek clarification that the relationship between the RTO orders and the SMD final rule is the same as in the Commission's SeTrans and WestConnect<sup>34</sup> orders.

**c. Commission Determination**

57. We clarify that the relationship between our prior declaratory orders in this proceeding and the SMD final rule is the same as that in the SeTrans and WestConnect orders, as we further clarify herein. We recognize that substantial time and effort have been put into developing solutions to market design issues confronting the Pacific Northwest in the context of complying with Order No. 2000.<sup>35</sup> The Commission has evaluated aspects of those regional solutions against the broad policy goals and objectives under consideration generically in the Standard Market Design NOPR. In approving various aspects of the RTO West compliance filings, we have tried to provide substantial assurance that the Commission has no intention of "undoing" solutions developed by the RTO, and approved by the Commission, in order to "replace" them with an alternative solution that may ultimately be developed in the generic rulemaking.

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<sup>33</sup>101 FERC at P 2.

<sup>34</sup>See Arizona Public Service Co., et al., 101 FERC ¶ 61,033 at P 4, order on reh'g, 101 FERC ¶ \_\_\_\_\_ (2002) (WestConnect).

<sup>35</sup>100 FERC at P 2.

58. We remain convinced that this approach is practical, builds on the substantial work the parties have put into developing RTO West, and should achieve the same efficient, competitive, and non-discriminatory market outcomes we envision under Standard Market Design while at the same time respecting important regional differences.

59. In adopting this approach, however, the Commission recognized that there was the potential for different RTOs within the Western Interconnection to adopt market design elements that might create seams or otherwise interfere with efficient inter-regional coordination. In the September 18th Order, the Commission stated:

We are encouraged by the parties' efforts to address seams issues by creating the Western Market Vision and assigning functions to the Steering Group to implement the Western Market Vision and its coordinated efforts with [the Western Market Interface Committee]. We approve Applicants' proposal for the consensus-building forum of the Steering Group and direct Applicants to work with WestConnect and California ISO to formalize the Steering Group as the seams resolution group for the RTOs in the Western Interconnection.<sup>[36]</sup>

60. Accordingly, while we have approved much of the conceptual framework for the creation of RTO West and have encouraged Applicants to continue working to develop appropriate solutions to the many outstanding issues that remain, the obligation remains to address any seams issues that may be created where different solutions are proposed by different RTOs in the Western Interconnection. In an October 25, 2002 Notice (October 25 Notice),<sup>37</sup> the Commission encouraged state participation to provide policy guidance to the seams resolution process and further requested that the Seams Steering Group of the Western Interconnection (SSG-WI) submit to the Commission by mid-January 2003:

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<sup>36</sup>100 FERC at P 246.

<sup>37</sup>Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design, Notice Announcing Process for Western Interconnection Market Design and Postponing Technical Conference, Docket No. RM01-12-000, et al., 67 Fed. Reg. 67,157 (2002).

a list of recommended market design elements appropriate for the western interconnect . . . which elements must be designed compatibly to avoid seams, and a plan and timeline for resolution of these issues that is coordinated with RTO development efforts. This plan would include specific tasks for each of the current SSG-WI working groups and any other working groups that may be necessary.

61. Since the issuance of the October 25 Notice, SSG-WI has made rapid progress in developing an open process for cooperation among and between the three developing RTOs, has signed a Memorandum of Understanding, and has posted on its website ([www.ssg-wi.org](http://www.ssg-wi.org)) a preliminary draft of major seams issues that need to be addressed across the broader region for compatibility. SSG-WI has working groups on market monitoring, common systems interface coordination, transmission planning and expansion, congestion management, and price reciprocity (addressing export fees between RTOs). We are encouraged by the efforts being made by RTOWest, WestConnect, and the California ISO under the SSG-WI process and we appreciate their recognition that these issues deserve to be examined and ultimately resolved on a West-wide basis. We take this opportunity to reiterate the importance of this process and that our approval of any individual RTO market design solution is based on our expectation that the parties will continue to identify and work towards a successful resolution of any resulting seams issues.

62. In this order, we also clarify which RTO elements have been approved by the Commission.<sup>38</sup> We do not intend to revisit these prior approvals upon issuance of the Standard Market Design final rule. These elements include:

- with respect to governance, the board and advisory committee structure and the board selection process;
- with respect to transmission pricing, the use of license plate pricing and the length of transition period (8 years) and the use of an export fee based on the average cost of the RTO West transmission system as a transitional pricing mechanism;
- with respect to transmission service, the use of catalogued transmission rights with voluntary contract conversion;

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<sup>38</sup>See *Avista Corp., et al.*, 95 FERC ¶ 61,114, order on reh'g, 96 FERC ¶ 61,058 (2001) (concerning the RTO West Stage 1 Filing) and the September 18 Order (concerning the Stage 2 Filing).

- with respect to congestion management, the development of a proposal reflecting the use of locational pricing and financial options to hedge against congestion charges;
- with respect to market monitoring, the stand-alone market monitoring, if a west-wide market monitor is not in place upon start-up of RTO West; and
- the planning and expansion proposal.

63. All of these areas are elements of market design that have been identified in the SSG-WI process as elements that must be examined to determine if the differences create seams problems. As such, it is possible that the SSG-WI process may identify seams that need to be addressed. If so, we will consider what steps are necessary to rationalize those seams, taking into consideration any recommendations developed by SSG-WI. This is consistent with our earlier orders in RTO West and WestConnect where we required the Applicants to identify and resolve seams issues through the SSG-WI process. Finally, we note that the September 18 Order did not make determinations concerning other elements of market design that are currently being considered in the Standard Market Design NOPR and/or through the SSG-WI process. These elements include resource adequacy, market power mitigation measures, outage coordination and limited liability. We expect that these issues will be addressed through the SSG-WI process. We further clarify that any issue not specifically addressed in our prior orders or that is subject to further development by Applicants may be reviewed for consistency with our findings in the SMD Final Rule.

## **2. Request for an Environmental Assessment**

64. Public Generating Pool argues that the Commission must conduct an environmental assessment on the impacts of RTO West before approving its establishment and operation and, depending on the outcome of the environmental assessment, may also have to prepare an environmental impact statement. Public Generating Pool states that the scope of the environmental assessment in support of Order No. 2000 was limited to nationwide impacts that may result from Order No. 2000 since Order No. 2000 concerned the formation of RTOs nationally and that the environmental assessment focused on air quality impacts resulting from possible changes in the use of thermal generation resources.

65. We will deny Public Generating Pool's request. It did not raise this issue in its protest.<sup>39</sup> Further, the Commission's regulations categorically exclude section 203 dispositions of facilities from requirements for environmental assessments unless persuasive evidence of unusual circumstances warranting an environmental study is presented.<sup>40</sup> Public Generating Pool has not persuaded us that unusual circumstances warrant an environmental study.

### **3. Request for Clarification Regarding Finality of the September 18 Order**

66. In view of the September 18 Order's statement that parties that wished to take issue with determinations in that order should do so in a timely rehearing, Public Power Council states that it is unsure as to what was a final determination (*i.e.*, whether it needs to seek rehearing at this time) and what was preliminary guidance (*i.e.*, whether it would have another opportunity to raise issues when Applicants submit their Stage 3 proposal).

67. Our statement in the September 18 Order was in response to a concern expressed by one party that Applicants could disregard Commission determinations that they disagreed with as "mere" guidance. Our intent was to explain that a party that wished to take issue with the guidance provided in the declaratory order had to do so in a timely request for rehearing. Although Applicants are not bound by our guidance, in that they would be free to propose alternatives in Stage 3, we do not expect parties to wait until Applicants submit the Stage 3 filing to raise issues with our declaratory order on the Stage 2 filing. To allow such untimely challenges would undermine the value of a declaratory order as an advisory opinion.

#### The Commission orders:

The requests for rehearing of the September 18 Order are hereby granted in part and denied part, as discussed in the body of this order.

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<sup>39</sup>See, *e.g.*, Florida Power & Light Co., 99 FERC ¶ 61,318 (2002).

<sup>40</sup>18 C.F.R. § 380.4(16) (2002). See also, *e.g.*, New England Power Co., *et al.*, 83 FERC ¶ 61,275 (1998), *aff'd*, Town of Norwood v. FERC, 202 F.3d 392 (1st Cir. 2000); Wisconsin Electric Power Co., *et al.*, 79 FERC ¶ 61,158 at 61,742-43 (1997); Public Service Co. of Colorado and Southwestern Public Service Co., 75 FERC ¶ 61,325 at 62,047 (1996).



By the Commission. Commissioner Massey dissenting in part with a separate statement attached.

( S E A L )

Linwood A. Watson, Jr.,  
Deputy Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Avista Corporation,  
Bonneville Power Administration,  
Idaho Power Company,  
Nevada Power Company,  
North Western Energy, L.L.C.  
PacifiCorp,  
Portland General Electric Company,  
Puget Sound Energy, Inc.  
Sierra Pacific Power Company,  
British Columbia Hydro and Power Authority

Docket No. RT01-35-009

(Issued December 20, 2002)

MASSEY, Commissioner, dissenting in part:

I support the decisions reached in this order except for its conclusion regarding the applicability of the SMD final rule. I am unwilling to conclude that the Commission should not revisit some of the decisions made in RTO orders if there are inconsistencies with the SMD final rule. I do not wish to tie the Commission's hands in developing

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regional electricity markets. The more complete reasoning for my view is articulated in my dissents to the SeTrans and WestConnect orders.<sup>41</sup>

For these reasons, I respectfully dissent in part from today's order.

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William L. Massey  
Commissioner

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<sup>41</sup>101 FERC at 61,038 and 101 FERC at 61,138 to 61,139, respectively.